51.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO (OS) 42/2007

M/s C.R. Constructions ..... Appellant
Through: Mr.R.Rajappan, Advocate.

versus

M/s National Projects Construction Corporation Ltd.
..... Respondent
Through: Mr.A.K.Singh, Advocate with
Mr.Vimal Dubey, Advocate with
Mr.A.K.Bagni, AR of the
respondent.

CORAM:
HON'BLE MR. JUSTICE T.S.THAKUR
HON'BLE MS. JUSTICE VEENA BIRBAL

O R D E R

% **13.09.2007**

CM 1839/2007 in FAO (OS) 42/2007

There is a delay of 49 days in the filing of this appeal. The appellant has, in the present application, sought condonation of the same. The prayer for condonation is not seriously opposed by the counsel opposite. In the circumstances and for the reasons stated in the application which is supported by an affidavit, we condone the delay and allow CM No.1839/2007.

FAO (OS) 42/2007

Admit.

2. With the consent of the parties the appeal has been heard for final disposal.

Signature Not Verified

Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

3. This appeal arises out of an order dated 30.10.2006 passed by a learned Single Judge of this Court whereby an arbitral award made in favour of the appellant for payment of a sum of Rs.41,95,295/- with interest @ 18% per annum has been set aside and the arbitration reference superseded.

4. It is, in our opinion, unnecessary to set out in detail the factual backdrop in which disputes between the parties were referred to Shri C.Rama Rao, retired Director General, CPWD, for adjudication. We say so because after the matter was argued at some length, learned counsel for the parties agreed that while the award made by the arbitrator could be set aside and the order passed by the learned Single Judge upheld to that extent, the reference need not be superseded. This would imply that the matter shall have to be remanded back for a fresh adjudication by either the same arbitrator or a substitute arbitrator to be appointed by this Court.

5. Mr.Singh, learned counsel appearing for respondent Corporation argued that instead of remanding the matter back to the very same arbitrator, it would be more appropriate if an arbitrator preferably a former Judge of this Court is nominated for a fresh adjudication of the disputes between the parties. He submitted that while 1/3rd of the fee that this Court may fix for

payment to the arbitrator so appointed, can be paid by the Corporation, the balance 2/3rd must be arranged by the appellant. The choice of the arbitrator to whom the matter could be remanded back was, however, left by the parties to the court with the prayer that the hearing fee as also the outer limit of the total amount payable towards fee should be fixed by the Court.

6. In the circumstances, therefore, and keeping in view the submissions made at the Bar, we uphold the order passed by the learned Single Judge to the extent the same sets aside the award made by Shri C.Rama Rao. The said order to the extent it supersedes the reference is, however, set aside and the matter remanded back for a fresh adjudication. We further direct that in place of Shri C.Rama Rao, retired Director General of CPWD, the fresh adjudication shall be undertaken by Shri J.P.Singh, former Judge of this Court, as sole arbitrator. The arbitrator shall be entitled to Rs.11,000/- per hearing subject to the outer limit of Rs.1,50,000/- all inclusive, but excluding incidental expenses and other clerical charges which shall be paid separately by the parties in terms of the directions that the arbitrator may issue. Two third of the amount payable towards fee and incidentals shall be paid by the appellant-

claimant; whereas the balance 1/3rd shall be paid by the respondent Corporation.

7. The newly appointed arbitrator shall endeavour to conclude the proceedings expeditiously but not later than eight months from the date the papers are received by him.

8. The parties shall appear before the newly appointed arbitrator on 8th October, 2007 for further directions.

9. This appeal is, with the above directions disposed of leaving the parties to bear their own costs. The Registry shall arrange to transmit the record of the earlier arbitrator to the newly appointed arbitrator forthwith.

10. We make it clear that nothing stated in the order passed by the learned Single Judge or in the body of this order shall be taken as expression of any final opinion by this Court on any issue that may fall for consideration before the arbitrator. Dasti.

T.S.THAKUR, J

VEENA BIRBAL, J

SEPTEMBER 13, 2007
srb

Fresh on 12.2.09 for extension of time for making and publishing the Award.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO(OS) 42/2007

C.R.CONSTRUCTION ..... Appellant

Through: None.

versus

NATIONAL PROJECT CONSTRUCTION ..... Respondent

Through: Mr.A.K.Singh and Mr.G. Suraj, Advocates.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER

% **19.11.2009**

C.M.No.12252/2009

This is an application under Section 16 of the Arbitration Act, 1940 filed by the Arbitrator seeking extension of time for making and publishing the award.

There is no appearance on behalf of the appellant, however, counsel for the respondent is present. In any case, notice need not be issued on the application, as the same has been preferred by the Arbitrator appointed by the order of this Court dated 13th September, 2007.

Accordingly, we allow the application of the Arbitrator and extend the time for publishing the award upto 31st December, 2009.

Application stands disposed of accordingly.

The counsel for the respondent is requested to communicate this order to the learned Arbitrator and the Registry shall also send a copy of this order by special messenger to the learned Arbitrator.

MUKUL MUDGAL,J

REVA KHETRAPAL, J

NOVEMBER 19, 2009
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